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SUPREME COURT OF THE UNITED STATES

October Term, 1945

No. 444

FLORENCE B. BIGELOW, et al.,
Petitioner-Plaintiffs,

vs.

RKO RADIO PICTURES, INC., et al.,
Respondent-Defendants.

ERRORS IN REPLY BRIEF FOR PETITIONERS NOTED FOR RESPONDENT-DEFENDANTS

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February 5, 1946

SUPREME COURT OF THE UNITED STATES

October Term, 1945

No. 111

FLORENCE B. BIGELOW, et al.,
Petitioner-Plaintiffs,

vs.

RKO RADIO PICTURES, INC., et al.,
Respondent-Defendants.

ERRORS IN REPLY BRIEF FOR PETITIONERS NOTED FOR RESPONDENT-DEFENDANTS

The reply brief for the petitioners contains many inaccuracies in its statement of the contentions in the brief for the respondents. Its receipt on February 1, 1946 is too late to allow time to print these before the case is reached for argument. A comparison of them with the brief for the respondents shows them.

This reply brief for the petitioners reargues the question of conspiracy to set up the Chicago release system which the verdict has settled for this case, and the brief deals but little with the question of absence of injury to the plaintiffs. On that subject there is a striking error of statement as to the effect of bank night and its inclusion in the plaintiffs' base figures. In fact the bank night

receipts were included in the base figures for an equivalent of fourteen months (R. 471). Bank night was played in 1935 for seven months. The accountant took into his estimate the whole of 1935, including these seven months (R. 471). Then for 1936 he took none of the figures for 1936. Instead he assumed them to be the same as the prior period. Thus he, by this repetition, included in his 1936 receipts, seven months of bank night, a total of fourteen months. The error is striking in its effect on the figures.

In the two bank night years 1935 and 1936, the receipts were $106,479.30 and $123,067.45 (R. 2071), an average of $114,773.37.

In the non-bank night years 1933 and 1934 the receipts were $95,120.40 and $98,166.85 (R. 2071), an average of $96,643.63.

In the next non-bank night years 1937 and 1938 the receipts were $102,382.15 and $92,934.83 (R. 2071), an average of $97,658.49.

That is — in 1937 and 1938, the average annual receipts exceeded the average annual receipts for 1933 and 1934 by $1,000 each year. If the non-bank night years were eliminated, and the two years before and the two years after were compared, not only were the average receipts for the later two years no less, but they actually were more. These are the plaintiffs' figures. Bank night years and their increased receipts were a part of the accountant's base. If they were eliminated, the average receipts for the two years, after double featuring was instituted by the plaintiffs, were greater than the average receipts for the two years before bank night was the plaintiffs' policy.

The reply for petitioners has not overcome the brief for the respondents at a single point.